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AMERICAN RED CROSS BLOOD SERVICES  
SOUTHERN CALIFORNIA REGION, Improperly  
Sued As The American Red Cross, STEVE  
BROWN and ROBERT BROWNING

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BRIAN SETENCICH,

Plaintiff,

v.

THE AMERICAN RED CROSS, a non-  
profit corporation, STEVE BROWN,  
ROBERT BROWNING and DOES 1  
through 30, inclusive,

Defendants.

Case No. C 07-03688 SBA

**UPDATED JOINT CASE MANAGEMENT  
STATEMENT AND PROPOSED ORDER**

Date: February 12, 2008  
Time: 1:00 p.m.  
Judge: Hon. Sandra B. Armstrong

**I.****JURISDICTION AND SERVICE**

Diversity jurisdiction under 28 U.S.C. §1332 exists because the American Red Cross (“ARC”) is a federally chartered instrumentality of the United States and a corporation with its principal place of business in the District of Columbia (26 U.S.C. §300101). All parties have been served. On November 27, 2007, each of the defendants filed motions to dismiss the first amended complaint which are set to be heard on February 12, 2008. The parties have stipulated to dismiss defendant Robert Browning.

**II.****DESCRIPTION OF THE CASE****1. Brief description of events**

**Plaintiff:** Plaintiff, Brian Setencich (“Setencich”) was recruited by the Director of Public Affairs and Communication, Marc Jackson to be ARC’s Communications Manager. Marc Jackson was diagnosed with a life threatening medical condition in approximately 2003, which required accommodation. At the time of the recruitment of Setencich, Marc Jackson was being set up to fail with inadequate staff support to accomplish his responsibilities, and denial of accommodations.

Setencich participated in three rounds of interviews over a nine month period of time. The interview panel determined that Setencich was the most qualified candidate and recommended his hire. When Marc Jackson submitted the paperwork to hire Setencich, Vice President Steve Brown prevented the hire, even though Marc Jackson had previously determined who he hired for his department. After Marc Jackson and his physician complained about the lack of accommodation and discrimination, Defendant Steve Brown verbally agreed to give Setencich a fair opportunity, promising that he and Human Resource Director Robert Browning would interview Setencich.

When Steven Brown interviewed Setencich, he told Setencich that his criminal record of filing a false tax return would not impede his hire. However, defendants, including Vice President Steve Brown never intended on hiring Setencich given his association with Marc

1 Jackson, who was targeted to be constructively discharged due to his disability and protected  
2 activity. The pretextual reason for not hiring Setencich was his criminal record. However, the  
3 defendants, including Steve Brown, approved of the hire of Angie Turner to be a nurse in the  
4 Southern California region, even though she had a felony conviction for her involvement in a  
5 heroin ring.

6 As a result of defendants conduct, Setencich has been harmed in that he did not seek  
7 alternative employment during the lengthy meet and greet process, given the representations from  
8 the defendants. In addition, Setencich suffered emotion distress damages.

9 **Defendants:** On June 1, 2005, Setencich submitted an application for employment to  
10 ARC based on a referral from his former colleague Marc Jackson, who had worked on  
11 Setencich's campaign and as his chief of staff when Setencich became a member of the California  
12 legislature. Generally, Human Resources oversees the application, interview and hiring process.  
13 However, with regard to Setencich, Jackson himself arranged for interviews without going  
14 through normal channels or waiting for HR to go through its normal pre-interview screening  
15 process. Advising Setencich that he would not be involved in recommending his hiring (in order  
16 to avoid the appearance of favoritism), Jackson arranged for Setencich to meet with members of  
17 his staff and Dr. Pekerol, who Jackson worked with as a member of an ARC advisory board and  
18 sought treatment from in connection with the illness which caused Jackson's disability.

19 After advising Jackson that Setencich would not be hired due to his felony tax evasion  
20 conviction, Bob Browning and Steve Brown each agreed to meet with Plaintiff as a courtesy to  
21 Jackson but immediately thereafter confirmed to Jackson that Setencich would not be hired.  
22 Brown denies that he told Setencich that his conviction would not impede his hiring. ARC policy  
23 states that convictions within the 7 year period preceding an application which pertain to financial  
24 crimes could be a basis for a decision not to hire. Further, in contrast to the lack of any  
25 connection between Ms. Turner's decades old conviction and her duties at ARC, Setencich, who  
26 was a public figure, had only recently been convicted and served time for a crime involving fraud  
27 and was applying for a job in which he would be interfacing with the media and other members of  
28 the public as a representative of ARC. Contrary to Setencich's speculative allegations, the

1 decision not to offer employment to Plaintiff was not related to his association with Mr. Jackson,  
2 who is still employed by ARC and has not been targeted for constructive or actual discharge  
3 based on his disability or for engaging in protected activity.

4 ARC denies that Plaintiff has been harmed in any amount or manner by ARC. Plaintiff  
5 was not employed or looking for other work at the time he applied to work for ARC. In the event  
6 Plaintiff did not seek alternative employment at any period when he was seeking employment by  
7 ARC, Plaintiff's choice was not justified by any conduct on the part of ARC.

8 **2. Factual issues that are in dispute:**

- 9 (a) That ARC denied Setencich employment as a result of his association with  
10 current Director of Public Affairs and Communication, Marc Jackson  
11 because of Jackson's disability and protected activities.  
12 (b) That Setencich participated in three rounds of interviews;  
13 (c) That "the panel" recommended the hire of Setencich as the most qualified  
14 candidate;  
15 (d) That defendants represented to Setencich that he was hired; and  
16 (e) That defendants represented to Setencich that his prior criminal conviction  
17 would not impede his hire.

18 **3. The principal legal issues in dispute:**

- 19 (a) Whether ARC subjected Setencich to unlawful employment discrimination  
20 in violation of the Fair Employment and Housing Act ("FEHA");  
21 (b) Whether defendants committed fraud by allegedly representing to  
22 Setencich he was hired and his prior criminal conviction would not impede  
23 his hire;  
24 (c) Whether defendants engaged in making negligent misrepresentations by  
25 allegedly representing to Setencich he was hired and his prior criminal  
26 conviction would not impede his hire; and  
27 (d) Whether any conduct by any of the defendants caused any compensable  
28 damage to Setencich.

#### 4. Other factual issues:

Not known at this time.

**5. Joinder of other parties:**

Plaintiff will seek to amend his Complaint or bring a motion to consolidate if Marc Jackson decides to sue ARC. Plaintiff is informed and believes Marc Jackson has perfected his right to sue by filing a Department of Fair Employment and Housing (“DFEH”) Complaint but is unable to confirm whether or not Marc Jackson intends on bringing a lawsuit against ARC. The defendants would likely oppose any effort to join Marc Jackson in the instant action or consolidate this action with any brought by Mr. Jackson. Among other things, such a joinder or consolidation would cause unnecessary delay in proceeding with the instant action and accordingly would unduly prejudice the defendants.

## 6. Evidence Preservation:

**Plaintiff:** Plaintiff has retained all documents that he has created, received or obtained in connection with the facts alleged in the complaint.

**Defendants:** Counsel for ARC is coordinating with ARC's Human Resources, Legal and IT departments to preserve all evidence relevant to issues reasonably evident in this action.

**7. Consent to assignment of a U.S. Magistrate Judge:**

The defendants do not consent to the assignment of a U.S. Magistrate for this matter.

### III.

## MOTIONS

Plaintiff intends on filing a motion for leave to amend his complaint or consolidate if Marc Jackson decides to sue ARC. Each of the defendants has filed a motion to dismiss the entire action. In the event this action survives beyond the pleading stage, the defendants anticipate filing a motion for summary judgment or partial summary judgment.

**IV.****DISCOVERY**

The parties propose the following discovery plan:

<u>Activities</u>	<u>Completed By</u>
Fact Discovery	30 days before trial
Expert disclosures	90 days before trial
Expert depositions	30 days before trial

The parties request court permission to be able to stipulate to changes to discovery procedures that do not affect court deadlines without seeking court approval.

**V.****RELIEF**

Plaintiff seeks compensatory damages, punitive damages and attorney fees under California Government Code Section 12965(b). The defendants assert that if Plaintiff could establish liability, his wage recovery should be limited to the period from the date of his termination until the date he commenced other employment, less any appropriate adjustments for insufficient mitigation efforts or periods when he was not able to work. Any medical costs should be calculated based on Plaintiff's ability to establish that unlawful conduct by the defendants caused Plaintiff to incur the costs and based on his ability to establish the legitimacy of the costs.

**VI.****SETTLEMENT AND ADR**

The parties agree to an early mediation in front of a Court-appointed mediator.

**VII.****TRIAL SCHEDULE****1. Requested trial date**

January 12, 2009

**2. Anticipated trial length**

This case will be tried by jury and is anticipated to be a 7 day jury trial.

**VIII.**

**DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSON**

The parties have filed their disclosures of non-party interested entities or persons pursuant to Civil L.R. 3-16.

DATED: February 1, 2008

LAW OFFICES OF JILL P. TELFER  
*A Professional Corporation*

/s/ Jill P. Telfer

JILL P. TELFER

Attorney for Plaintiff

**BRIAN SETENCICH**

DATED: February 1, 2008

BAKER & HOSTETLER LLP

/s/ Sabrina L. Shadi

SABRINA L. SHADI

Attorneys for Defendant AMERICAN RED  
CROSS BLOOD SERVICES SOUTHERN  
CALIFORNIA REGION, STEVE BROWN and  
ROBERT BROWNING

**CASE MANAGEMENT ORDER**

The Case Management and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition, the court orders:

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE, UNITED STATES DISTRICT COURT